

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

GRANT BIRCHMEIER, STEPHEN PARKES,  
and REGINA STONE, on behalf of themselves  
and a class of others similarly situated,

*Plaintiffs,*

*v.*

CARIBBEAN CRUISE LINE, INC., ECONOMIC  
STRATEGY GROUP, ECONOMIC STRATEGY  
GROUP, INC., ECONOMIC STRATEGY, LLC,  
THE BERKLEY GROUP, INC., and VACATION  
OWNERSHIP MARKETING TOURS, INC.,

*Defendants.*

Case No. 1:12-cv-04069

Honorable Matthew F. Kennelly

**PLAINTIFFS' UNOPPOSED MOTION FOR ORDER COMPELLING SPRINT PCS  
TO PRODUCE CALIFORNIA SUBSCRIBER RECORDS**

Plaintiffs Grant Birchmeier, Stephen Parkes, and Regina Stone (collectively the "Plaintiffs"), by and through Class Counsel, hereby submit this unopposed Motion requesting that the Court enter an order requiring non-party Sprint PCS ("Sprint") to produce the name and address information of its California subscribers in response to Plaintiffs' October 30, 2014 Subpoena. In support of the instant Motion, Plaintiffs state as follows:

1. On August 18, 2014, the Court entered an order certifying two Classes—a landline Class and cellular telephone Class—consisting of "All persons in the United States to whom 1) one or more telephone calls made by, on behalf of, or for the benefit of the Defendants, (2) purportedly offering a free cruise in exchange for taking an automated public opinion and/or political survey, (3) which delivered a message using a prerecorded or artificial voice, (4) between August 2011 and August 2012, (5) and your (i) telephone number appears in Defendants' records of those calls and/or the records of their third party telephone carriers or the third party telephone carriers of

their call centers or (ii) your own records prove that you received the calls – such as your telephone records, bills, and/or recordings of the calls – and you submit an affidavit or claim form if necessary to describe the content of the call.” (Dkt. 241 at 31.)

2. Thereafter, Plaintiffs proposed a Notice Plan in which they would endeavor, *inter alia*, to obtain the names and addresses of Class members whose telephone numbers appeared in Defendants’ records by serving subpoenas on certain wireless telephone carriers. (Dkt. 247.)

3. As part of these efforts, on October 30, 2014, Plaintiffs’ Counsel issued a subpoena to Sprint requesting such information for the 44,194 numbers (the “Subpoena”) on Defendants list identified by Neustar, Inc. as belonging to Sprint. (A true and accurate copy of Plaintiffs’ October 30, 2014 Subpoena to Sprint is attached hereto as Exhibit A.)

4. Sprint produced the subscriber information for each of the requested telephone numbers, with the exception of the subscriber information for individuals who resided in California. Sprint withheld subscriber information for California residents based on California Public Utility Code § 2891 and California Rule of Civil Procedure § 1985.3, and stated that a Court order or customer consent would be required for those records.<sup>1</sup> (*See* December 5, 2014 Email from Ms. Cali Keep, a true and accurate copy of which is attached hereto as Exhibit B.)

5. Sprint subsequently agreed not to oppose Plaintiffs’ request for a Court order directing Sprint to produce the California records. (*See* December 5-17, 2014 Email Chain between Plaintiffs’ Counsel and Counsel for Sprint a true and accurate copy of which is attached hereto as Exhibit C.)

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<sup>1</sup> Given that Sprint has agreed to produce records of its California subscribers whose numbers appear in Plaintiffs’ Subpoena so long as an order is entered, Counsel for Plaintiffs take no position as to whether the above-mentioned rules require Sprint to obtain consent from their California subscribers before producing the requested records, and reserve their right to argue that such consent is not necessary if other carriers withhold records based on the same statute.

6. As such, and as discussed with the Court during the recent December 11, 2014 Status Hearing, Plaintiffs now request that the Court enter an order requiring Sprint to comply with Plaintiff's Subpoena by instructing Sprint to produce the names and last known home and email address(es) for the subscriber numbers identified by Neustar as being owned and operated by Sprint on the date those numbers received the calls at issue in this case.<sup>2</sup>

7. Counsel for Plaintiffs have conferred with Defendants and representatives for non-party Sprint, all of whom have indicated that they do not oppose Plaintiffs' request for such an order.

8. WHEREFORE, Plaintiffs respectfully request that the Court enter an order instructing Sprint to comply with their October 30, 2014 Subpoena by producing the remaining names and last known home and email address(es) for the California subscribers whose numbers received the calls at issue in this case on the dates identified in Plaintiffs' Subpoena.

Date: December 17, 2014

By: /s/ Eve-Lynn J. Rapp

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<sup>2</sup> A [proposed] agreed order is attached hereto as Exhibit D.

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**CERTIFICATE OF SERVICE**

I, Eve-Lynn J. Rapp, an attorney, hereby certify that on December 17, 2014, I served the above and foregoing *Plaintiffs' Unopposed Motion for Order Compelling Sprint PCS to Produce California Subscriber Records* by causing a true and accurate copy of such paper to be transmitted to all counsel of record via electronic mail, on this the 17th of December, 2014.

/s/ Eve-Lynn J. Rapp